THE HON'BLE MR JUSTICE J.CHELAMESWAR

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No: 26729 of 2005

Between:

The District Medical & Health Officer,

Srikakulam & another

… PETITIONERS.

AND

Sri A. Venkata Ramanamurthy,

Driver (on daily wages)

O/o. The District Medical & Health Officer,

Srikakulam.

… RESPONDENT.

THE HON'BLE MR JUSTICE J.CHELAMESWAR

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

ORDER:- **(PER THE HONOURALE JC,J)**

The writ petition is filed with a prayer as follows:

> "……Hon'ble Court may be pleased to issue an appropriate Writ or direction more particularly one in the nature of Writ of Certiorari calling for the records, relating to and connected with order dated 05.08.2004 in O.A.No.258 of 2000 on the file of the Hon'ble A.P.A.T., Hyderabad and to quash the same by holding as erroneous and contrary to law."

The petitioners are the respondents in O.A.No.258 of 2000 on the file of the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") and the sole respondent herein was the applicant before the Tribunal.

The case of the sole respondent is that he holds a driving licence for light motor vehicle since 1989. He was appointed as a driver on daily wage basis and being continued as such with the 1st respondent. Admittedly, the respondent herein was appointed in the year 1995. After working for a couple of years, he approached the Tribunal by way of O.A.No.7847 of 1997 seeking a direction to the sole respondent therein, who is the 1st petitioner herein, to appoint him as a regular driver. By an order, dated 26.12.1997, the Tribunal disposed of the said O.A. with a direction to consider the case of the applicant for appointment as driver on regular basis in any one of the eight vacancies in the unit of appointment i.e., in the Office of the District Medical and Health Officer, Srikakulam. It appears from the order that an un-rebutted submission of the applicant, that there are eight existing regular vacancies of driver in the Office of the 1st petitioner herein, was accepted by the Tribunal. The Tribunal therefore, directed the 1st petitioner herein to consider the case of the respondent herein for a regular appointment as driver for a period of three months. The Tribunal further directed that pending finalisation of such process the sole respondent herein be continued on the same terms and conditions on which he was working then. The petitioners herein, more particularly, the 1st petitioner, who was the sole respondent in the abovementioned O.A., apparently did not take any decision pursuant to the said direction.

What exactly transpired thereafter is not made known to the Court except the existence of the proceedings in Memo No.4484/J1/2000, dated 29.11.2000, of the Special Chief Secretary to the Government of A.P. In the said proceedings it is

stated that the initial appointment of the respondent herein was irregular in view of the provisions of Act 2/94 and therefore, the Special Chief Secretary directed the Director of Health to remove the respondent herein from service.

It is to be mentioned here that admittedly the appointment of the respondent herein on daily wages was made after the Act 2/94 came into force, which was preceded by an ordinance No.8/93. Therefore, when the enactment was made the same was given retrospective effect from 25.11.1993 obviously to the date on which the ordinance came into force. Section 3 of the said enactment prohibits the appointment of any person in any public service to any post on daily wages. Notwithstanding the prohibition, the respondent herein was, in fact, appointed on daily wages. None of the proceedings of the State ever tried to identify as to who was responsible for such appointment nor any action was initiated against the officer responsible for such an irregular appointment though Section 13 of the said enactment makes it an offence on the part of any person or authority, who contravenes the provisions of the said Act, punishable for imprisonment for a term which shall not be less than six months and fine.

That apart, as we have already noticed the submission of the respondent herein before the Tribunal in the abovementioned O.A. that there are eight regular vacancies of driver available with the 1st petitioner herein went un-rebutted, the proceedings, dated 29.11.2000, of the Special Chief Secretary does not even make a reference to the said fact. Pursuant to the direction given by the Supreme Court on 12.08.1992 in Civil Appeal No.2979 of 1992 and batch, the Government issued G.O.Ms.No.212, Finance and Planning, dated 22.04.1994 providing for a scheme by which the service of the persons who were irregularly appointed on daily wages could be regularized, but none of these matters was considered by the Government. Challenging the Memo of the Special Chief Secretary, the respondent herein once again approached the Tribunal in O.A.No.1279 of 2001. By an order, dated 02.03.2001, the O.A. was disposed of with a direction as follows:

> "Keeping in view the above submission, the 3rd respondent is directed "to consider the case of the applicant for appointment as

> driver as and when steps are taken to fill up the case of driver in his establishment as per rules along with others as per his eligibility, and also taking into consideration the previous service already rendered by him”.”

Taking shelter under the observation that the case of the respondent herein be considered “as and when steps are taken to fill up the post of driver in the establishment”, the petitioners quietly ignored the order of the Tribunal.

It is not the case on record of the petitioners that the Car that was being driven by the respondent herein was not being used by the department; nor it is not the case of the petitioners that a regular recruitment subsequent to the abovementioned order in which a driver was recruited to drive the said Car; or that some person other than a regular driver is driving the Car; or that the Car is lying idle without being put to any use.

However, in view of the absolute inaction on the part of the petitioners, the respondent herein once again approached the Tribunal in O.A.No.258 of 2000 with a prayer as follows:

> “…….praying this Tribunal to direct the 1st respondent to prepare and forward the bills to the 2nd respondent for payment of wages of the applicant for the period he worked and further direct the 2nd respondent to pass the bills sent by the 1st respondent and consequently declare the action of the 2nd respondent in not passing the bills of the applicant forwarded by the 1st respondent as illegal, arbitrary, unconstitutional.”

It is the assertion of the respondent herein in the said O.A. that he has been continuously working with the petitioners. No counter-affidavit was filed in the abovementioned O.A. in spite of repeated opportunities given by the Tribunal. In the circumstances, the Tribunal disposed of the said O.A. with a direction as follows:

> "So, a direction is given to the 2nd respondent to honour the bills submitted by the 1st respondent and wages should be paid to the applicant as was paid earlier to the applicant from the date of filing of the O.A. and subsequent thereto till regularization is made. Necessary orders should be passed with regard to regularization of the services of the applicant by implementing the orders rendered by this Tribunal in O.A.No.7847 of 1997, within a period of three months from today."

challenging the said order, the present writ petition is filed.

The above-narrated facts firmly demonstrate the utter callousness on the part of the petitioners in dealing with the case of the respondent herein. The case of the respondent herein, in our view, has never been considered by a competent authority in accordance with law nor the appropriate and relevant factors were taken into consideration to decide whether the respondent service is to be regularized or not.

In the circumstances, we do not see any reason warranting interference with the order under challenge of the Tribunal. The writ petition is dismissed at the admission stage.

Before parting with the case, we are of the opinion that the writ petition is a sheer abuse of process of law and therefore requires to be dismissed with exemplary costs quantified at Rs.10,000/- (Rs. Ten thousand only) payable to the A.P. Legal Services Authority, within a period of two weeks from the date of receipt of a copy of this order. However, it is open for the Government to recover the said amount, if it can identify the officer/officers, as the case may be, who are responsible for all this misadventure.

We would like to place on record that if the State believes only one part of the Act 2/94 is required to be implemented without enforcing the other part, which makes it a punishable offence on the part of any person making irregular appointment, the State, we are afraid is not acting in accordance with its constitutional obligations.

J.CHELAMESWAR, J

RAMESH RANGANATHAN, J

Date: 19.12.2005

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